

**Utah Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)**

Thursday, October 20, 2022 - 12:00 to 2:00 p.m.

Attended			Not Present
Judge Keith Kelly	Rob Ence	Wendy Naylor	Judge James Brady
Sarah Box	Xia Erickson	Andrew Riggle	Judge David Connors
Deborah Brown	Wendy Fayles	Keri Sargent	Shane Bahr
Brant Christiansen	Leslie Francis	Shonna Thomas	Alan Ormsby
Tantalisa Clayton	Nels Holmgren	Katie Thomson	Danaka Robles
Katie Cox	Eve Larsen	Holly Thorson	James Toledo
Rob Denton	Nan Mendenhall	Kaye Lynn Wootton	Todd Weiler
			Michelle Wilkes

Agenda			
	Topic	Presenter	Materials
12:00	Meeting begins		
	<ul style="list-style-type: none"> <li>• <b>Housekeeping</b></li> <li>• <b>Minutes</b></li> </ul>	Judge Kelly	– <i>WINGS Minutes (August 2022 – draft)</i>
12:10	<b>Projects Updates</b>		
	<ul style="list-style-type: none"> <li>• <b>Brown Bag presentation to DCJ</b></li> <li>• <b>CJA Rule 6-501 – additional changes</b></li> <li>• <b>CJA Rule 6-507 – Court Visitors</b></li> <li>• <b>G/C forms to Forms Committee</b> <ul style="list-style-type: none"> <li>○ <b>Language question</b></li> </ul> </li> </ul>	Judge Kelly Shonna Thomas	– <i>Rule 6-501 – rule draft – Redline Mtg Edits (10.3.22)</i> – <i>Rule 6-507 – Court Visitor Rule (LSS Edits 10.4.22)</i>
12:30	<b>Ongoing Projects</b>		
	<ul style="list-style-type: none"> <li>• <b>Utah Code 75-5-303</b></li> </ul>	Group Discussion	– <i>Utah Code 75-5-303 (to discuss - 2.14.22)</i>
1:25	<b>New Topics</b>		
	<ul style="list-style-type: none"> <li>• <b>WINGS Membership process (CJA Rules 1-205 &amp; 3-421)</b></li> <li>• <b>Nomination of Dr. Embree</b></li> <li>• <b>G/C Forms Subgroup</b></li> </ul>	Judge Kelly Shonna Thomas	<i>TBD</i>
1:50	<b>Other Business</b>		
	<ul style="list-style-type: none"> <li>• <b>Judge Connors' Retirement</b></li> </ul>		
2:00	Meeting adjourned		

## Housekeeping

- Meeting began at 12:03pm.
- A motion was made to approve the minutes from the previous meeting (August 2022). The motion was seconded and approved.
- Wendy Naylor was welcomed to WINGS. Wendy has worked as a Program Administrator with Office of Public Guardian (OPG) for approximately four years (ten years with OPG). She will be serving as interim Director of OPG.
- Xia Erickson has accepted a new position with Salt Lake Count Aging and Adult Services. The Committee thanks for Xia for her service on WINGS and wishes her the best in her new position. Xia is invited and welcome to attend WINGS meetings in the future if her time and position permits.
- Meeting adjourned at 1:54pm.

## Project Updates

### **Brown Bag presentation to District Court Judges (DCJ)**

Training was provided to District Court Judges during a Brown Bag session on October 13, 2022, involving the changes to CJA Rule 6-501 set to go into effect on November 1, 2022. Presenters included Judge Kelly, Brant Christiansen, Allison Barger, Shonna Thomas, Michelle Wilkes, and Stacy Haacke.

The training covered the reasons and need for the amendments to the rule, the related statutory requirements for reviewing annual reports, the value report reviews add in guardianship and conservatorship cases, and the resources available to judges to make the report review process easier.

### **CJA Rule 6-501 – additional changes**

A comment received after the rule was approved asked for clarification on the filing requirements for corporate fiduciaries and for individuals under guardianship or conservatorship whose only source of income comes from a federal program. The probate subcommittee reviewed the comment and made a few redline changes to the rule to provide needed clarification.

The rule, with previously approved changes will still go into effect on November 1, 2022. The additional redline changes will be brought before the Policy, Planning, and Technology committee for separate approval.

#### Discussion

- Under the new redline changes, corporate fiduciaries could include their internal report as an attachment in addition to the court-approved financial accounting form, not in lieu of the court's form.
- The forms used by corporate fiduciaries may be more detailed than the court's accounting form.
- Some corporate fiduciaries may decide to adopt the format of the court-approved form as their internal form, to simplify the process.
- The format may not matter as much as being able to report accounting in a way that can be tracked to the individual protected person, with specific detail to identify the funds and how they were used for the protected person's benefit.

- Sometimes the complexity of a report can be used to hide problems.
- The rule includes an accommodation to file an objection to the report in a manner other than in writing. The rule includes general language for this accommodation, but the court may need to develop guidelines on how it would handle an objection made via email or phone call.
- The rule does not resolve the issues that could arise in non-written objections, but it allows the judge some flexibility and discretion in handling these types of objections.
- When Clerks of Court are faced with something ambiguous in a rule, they get together and put in place an internal process of policy that is shared statewide.
- Having it stated in the Notice of the Right to Object that it is not appropriate to ask for the substitution or removal of the guardian or conservator in that objection may address situations where a party may object to a specific report as a means of voicing an objection to the arrangement altogether.

#### Decisions Made

- Keri Sargent will share with the Clerks of Court a summary of this discussion and collect their thoughts and recommended practices for dealing with objections that are not in writing.

#### **CJA Rule 6-507 – Court Visitors**

CJA Rule 6-507 is listed on the probate subcommittee's November meeting agenda. The committee will look to finalizing this rule at that time, with the intent to bring the amended rule back to the Policy, Planning, and Technology committee for final review/approval.

#### Discussion

- The rule only mentions adult once. More clarification may be needed to distinguish between adult and minor guardianships and the role the court visitor may play. It may also help to review the statute for guardianship of a minor to see if there is language that refers to a court visitor.

#### **Guardianship/Conservatorship Forms to Forms Committee**

WINGS has been working on revisions to the following guardianship/conservatorship forms:

- Report on the Status of the Protected Person
- Guardianship Financial Accounting
- Request to Assign a Court Visitor
- Inventory Report
- Motion to Review or Alter a Guardianship or Conservatorship of an Adult
- Motion to Review or Alter a Guardianship or Conservatorship of a Minor
- Motion to Terminate a Guardianship or Conservatorship of an Adult
- Motion to Terminate a Guardianship or Conservatorship of a Minor
- Motion to Change Accounting Report Requirements

These documents have been sent to the Forms Committee for review. Shonna has attended several meetings with the Stylistics subcommittee, to assist as they ensure the forms meet the court's style guide requirements.

## Ongoing Projects

### Utah Code 75-5-303

The legislative liaison recommended that WINGS develop language or redline suggested revisions to the statute to then be reviewed by the legislative committee. The highest priority items in the statute are 75-5-303(5)(b), as that describes criteria not currently in use by the medical profession, and (5)(d) to clarify language on what must be in place to waive the requirement to have an attorney represent the respondent.

#### Discussion

- The medical language has to be clear in its distinction between commonly used criteria, and the understanding that functional limitations do not necessarily equate to an inability to express preferences and or make decisions.
- The statute indicates that a court may appoint a physician to review the individual's capacity, but it is not clear what falls under the physician term, and it does not account for other health care professionals who would be competent in conducting a review of that nature.
- The term "health care professional" is defined under the Malpractice Act, or you could list specific examples, such as physician, psychiatrist, neuropsychologist, professional trained in assessing functional capacity, etc. However, a change in this language has been tried in the past and it was not well-received.
- The person chosen to examine the individual must be appropriate by degree or specialty, not just someone chosen by the petitioner, where there may be a conflict of interest.

#### Decisions Made

- This topic will be the focus for the committee at the December meeting.

## New Topics

### WINGS Membership process (CJA Rules 1-205 & 3-421)

Earlier this year, WINGS received approval to be added as a formal Judicial Council committee. With that approval comes a specific process to follow to appoint successors to committee positions held by judges and other judicial support staff. With Judge Connors planning to retire in the next few months, WINGS needs to take steps to find a successor. WINGS would also benefit from expanding membership in the courts to some of the rural districts. A chart was created that shows the three rules that correspond to WINGS membership – CJA Rules 1-205 and 3-421 and the WINGS Bylaws.

#### Decisions Made

- Shonna will provide the chart to WINGS members before the next meeting.

### Nomination of Dr. Embree

Dr. Embree is a neuropsychologist nominated to replace Dr. Michelle Miranda on the WINGS committee. The committee discussed Dr. Embree's qualifications and expertise and found them well-aligned with the mission and purpose of WINGS. A motion was made to invite Dr. Embree to join WINGS as a full committee member. The motion was seconded and approved. A vote was called and received a unanimous agreement to invite Dr. Embree to WINGS.

#### Decisions Made

- Brant will reach out to Dr. Embree and extend a formal invitation, copying Shonna.
- Shonna will follow up and provide details to Dr. Embree on WINGS and the next WINGS meeting.

### **Guardianship/Conservatorship Forms Subgroup**

Shonna has been tasked with creating a Guardianship Forms subgroup to tackle updates to all the relevant court forms in this arena. Any WINGS member who is interested in being part of that subgroup is welcome.

#### Discussion

Court forms are inconsistent on how the “protected person” is referred to, ranging from respondent, protected person, ward, or incapacitated adult. As the guardianship forms are updated, is there a best practice or statutory requirement on how the individual under or potentially under guardianship is referred to on court forms?

#### RESPONDENT

- The term “Respondent” covers pre- and post-appointment in guardianship cases, but it is somewhat dehumanizing.
- There have been some situations where there could be more than one respondent, so that term could be confusing.
- If a protected person petitions the court for a change in guardianship, they are technically the petitioner in that case, not the respondent, which adds to the confusion.
- The way the Clerk enters a party in CORIS will affect if it is searchable in a public database. If a person is labeled in CORIS as a protected party, the name is less likely to show up on a search, whereas respondent would be more likely to show up. However, programming can be made to accommodate whatever term is decided upon.

#### WARD OR PROTECTED PERSON

- Both Ward and Protected Person are defined terms in the probate statute.
- Proposed Protected Person pre-appointment and Protected Person post-appointment are options.
- Protected Person has an implication of a less than full personhood, whereas Person Under Guardianship or Person Under Conservatorship is more accurate and brings some humanity back into the term.
- The Uniform Act indicates both Protected Person and Person Subject to Guardianship are acceptable.

#### Decisions Made

- Leslie Francis and Katie Cox both volunteered to join the subgroup. Sarah Box and Holly Thorson had agreed to participate previously. Keri Sargent will serve as a liaison with administration and the Clerks of Court, and Nathanel Player will serve as a liaison to the Forms committee.
- Shonna will reach out to the subgroup members to arrange a planning meeting time.

### **Other Business**

#### **Judge Connors’ Retirement**

- Discussed in conjunction with item “WINGS Membership process (CJA Rules 1-205 & 3-421)” above.

<b>Action Items</b>	
<p><b>Rule 6-501</b></p> <ul style="list-style-type: none"> <li>– Share with the Clerks of Court a summary of the WINGS discussion and collect their thoughts and recommended practices for dealing with objections that are not in writing.</li> </ul>	Keri Sargent
<p><b>WINGS Membership process (CJA Rules 1-205 &amp; 3-421)</b></p> <ul style="list-style-type: none"> <li>– Provide the membership chart to WINGS members before the next meeting.</li> </ul>	Shonna Thomas
<p><b>Replacement for Dr. Miranda</b></p> <ul style="list-style-type: none"> <li>– Reach out to Dr. Embree and extend a formal invitation.</li> <li>– Follow up and provide details to Dr. Embree on WINGS and the next WINGS meeting.</li> </ul>	Brant Christensen Shonna Thomas
<p><b>New/amended guardianship forms</b></p> <ul style="list-style-type: none"> <li>– Reach out to the subgroup members to arrange a meeting time.</li> </ul>	Shonna Thomas

<b>Deferred / Continuing Items</b>
<ul style="list-style-type: none"> <li>– Utah Code 75-5-303</li> <li>– WINGS membership process</li> <li>– Project updates: Rule 6-501, Rule 6-507, and in-progress guardianship form revisions</li> </ul>

<b>Next Meeting(s):</b>	February 16, 2023 April 20, 2023 June 15, 2023 August 17, 2023 October 19, 2023
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